

STRENGTH

PEACE

UNITY

Mohawk Council of Kahnawake

P.O. Box 720
Kahnawake Mohawk Territory J0L 1B0

LEGAL SERVICES



Tel.: (450) 632-7500
Fax: (450) 638-3663
Website: www.kahnawake.com

Seskehkó:wa/September 7, 2016

WITHOUT PREJUDICE

VIA ELECTRONIC FILING

Attention: Sheri Young, Secretary of the Board
National Energy Board
517 10th Avenue SW
Calgary, Alberta
T2R 0A8

RE: Motion and letter for recusal- Request for comments
File OF-Fac-Oil-E266-2014-01 02
Energy East Project and Asset Transfer (Energy East)
File OF-Fac-Gas-T211-2014-01 02
Eastern Mainline Project (EML)

Dear Ms. Young,

The present letter is in response to the National Energy Board's ("NEB") invitation (A5E6T3) for the Intervener Mohawk Council of Kahnawà:ke ("MCK") to provide submissions on the Notice of Motion filed by Transition Initiative Kenora on August 22, 2016 (A5E617), in which they request that Members Gauthier and Mercier recuse themselves from the Hearing Panel and the letter filed by Stratégies Énergétiques ("SE") and the Association québécoise de lutte contre la pollution atmosphérique ("AQLCPA") on August 11, 2016 (A5E45S), which included seven requests, many of them relating to the recusal of the Hearing Panel.

The Notice of Motion and letter for recusal concern the meeting that took place between the NEB (including Panel Members Gauthier and Mercier) and Mr. Jean Charest, who was working as an advisor for Energy East at the time of the meeting ("Meeting").

In its invitation for submissions, the NEB indicated that "The Board will consider those submissions and establish any further steps after that date (September 7, 2016)".

The MCK agrees with the main arguments presented by Transition Initiative Kenora in their Notice of Motion. More specifically, the MCK submits that the facts outlined in the Notice of Motion pertaining to the Meeting demonstrate that Member Gauthier and Member Mercier did not comply with the NEB's Code of Conduct requirements and that their conduct gives rise to a reasonable apprehension of bias.

Given this, the MCK also submits that Member Gauthier and Member Mercier should recuse themselves from the Panel for the Energy East and Eastern Mainline projects.

Following the recusal of Member Gauthier and Member Mercier, the MCK submits that a process should be established to address request number seven (7) made by SE and the AQLCPA, to the effect that an independent investigation should take place regarding the events surrounding the meeting between the Board and Mr. Charest. Once a full investigation has been completed, additional measures (for example pertaining to requests number two (2), three (3), and five (5) made by SE and the AQLCPA) may need to be taken.

Furthermore, the MCK supports the view of Environmental Defence (A5E9F0) that the Energy East review process should be suspended until the federal government completes a comprehensive review of the legislation that applies to major projects, including the planned modernization of National Energy Board and environmental assessment processes. While we understand that this issue is beyond the scope of the NEB's consideration of the Notice of Motion and letter for recusal, we nevertheless include this remark in our submission, as it speaks to the more fundamental issues that the MCK have with the review process in place.

Finally, given that the MCK is uncertain as to the process that the Board intends to follow in considering the Notice of Motion, the letter request, and our letter of comment, the MCK reserves its right to make additional motions, submissions or comments regarding any aspect related to the Meeting and the composition of the Panel for this Hearing Order.

Yours truly,

MOHAWK COUNCIL OF KAHNAWÀ:KE
LEGAL SERVICES



Me Francis Walsh, Legal Counsel

cc. The Honourable James Gordon Carr, Minister of Natural Resources, by e-mail:
Jim.Carr@parl.gc.ca

The Honourable Catherine McKenna, Minister of Environment and Climate Change, by
e-mail: Catherine.McKenna@parl.gc.ca